IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LG. PHILIPS LCD CO., LTD.,

Plaintiff,

v.

TATUNG COMPANY;
TATUNG COMPANY OF AMERICA, INC.;
CHUNGHWA PICTURE TUBES, LTD.;
AND VIEWSONIC CORPORATION,

Defendants.

C.A. No. 05-292 (JJF)

DEMAND FOR JURY TRIAL

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RESPONSE TO PLAINTIFF'S SECOND MOTION TO COMPEL DEPOSITION TESTIMONY AND FOR SANCTIONS

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Dated: June 5, 2006

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I. INTRODUCTION.

Plaintiff, again, has moved this Court for relief without having complied with Delaware District Court Local Rule 7.1.1. And, again, Plaintiff's Motion is long on rhetoric and short on substance.

Plaintiff's complaints regarding 30(b)(6) witness preparation are ill-founded and of their own making. Defendants are prepared nonetheless to produce additional witnesses for 30(b)(6) testimony where reasonably necessary; Plaintiff would have avoided this issue entirely had it consulted with Defendants prior to filing the present motion as required by Local Rule 7.1.1. Indeed, Defendants have represented that "we are prepared to offer another witness on topics 1-5 listed in [LPL's] letter and reasonably related topics as soon as next week, even though LPL has already exceeded the number of hours of CPT 30(b)(6) deposition allotted for by the court." (Ex. A). Plaintiff's complaints regarding deposition conferences arise, in large part, from significant language and cultural differences - the deponents are native speakers of Chinese with little or no understanding of English. These difficulties, compounded by LPL's improper practice of asking and re-asking the same question in an effort to confuse the witnesses, have contributed to the dispute presently before the Court.

A. Defendants' 30(b)(6) Witnesses Were Prepared Notwithstanding Plaintiff's Overly Broad Deposition Topics.

Plaintiff has failed to provide the Court with the background underlying the dispute relating to the 30(b)(6) depositions in question -- information that places the dispute in its proper context. Specifically, Defendants informed Plaintiff in advance of the depositions that the topics identified as being the subject of the 30(b)(6) depositions were not manageable because of their scope and breadth. (Ex. B). Thereafter, on May 8, 2006, Plaintiff wrote to Defendants and actually added to the already onerous and unclear deposition topics. (Ex. C). In response, Defendants wrote to Plaintiff and requested that Plaintiff provide a "simplified, focused and narrowed list of topics by tomorrow morning at the latest." (Ex. D). (emphasis in original).

Despite Defendants' repeated requests for a coherent and workable list of 30(b)(6) topics, Plaintiff never complied. On May 15, 2006, Defendants made a final effort to convince Plaintiff to provide reasonable and clear deposition topics:

> I note that you continue to refuse to provide an understandable and reasonable list of 30(b)(6) deposition topics. You leave us no choice but to attempt to prepare our witnesses on a vague, overbroad and unduly burdensome list. We will do the best we can, but all parties would be better served if you would provide a narrowed, focused and comprehensible list. Your refusal to provide a reasonable topic list will seriously limit your ability to complain that defendants' witnesses are not adequately prepared.

(Ex. E at 4). Now, Plaintiff complains that there were two instances where a witness was not able to answer a limited number of questions. These complaints should not be countenanced in light of Plaintiff's refusal to provide a workable list of deposition topics.

Stripped of its hyperbole, Plaintiff is left with nothing to support the proposition that Defendants' 30(b)(6) witnesses were unprepared. Plaintiff's main argument -- "Defendants' designees have been so unprepared to testify on behalf of their respective corporations that they frequently either provide wholly unresponsive answers or refuse to answer at all" -- is stated without any citation whatsoever.[1] Indeed, despite asserting that Defendants' 30(b)(6) witnesses "frequently" provided inadequate responses, and refused to answer questions, Plaintiff's Motion identifies only two instances where the witness could not answer the question, and no instances where the witness refused to answer a question (except for privilege). *See* D.I. 199 at 2. Neither of the two instances where the witness could not answer demonstrate that the witnesses were not prepared, nor do they justify the broad relief sought by Plaintiff

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[1] Instead, Plaintiff sets up a strawman argument that the witnesses were required to spend a certain predetermined amount of time preparing for the deposition, and that the witnesses were required to review the notice of deposition and certain correspondence between counsel. There is, of course, no requirement for either proposition. Moreover, some witnesses (like Mr. He) do not require extensive preparation because they are very knowledgeable about the topics to be covered by the deposition. Here, as the record reflects, Defendants' witnesses were properly prepared to testify.

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. Otherwise, Plaintiff has not identified any instances in which Defendants' 30(b)(6) witnesses were not prepared. Nonetheless, Defendants remain willing to provide additional witnesses to respond to those questions that the witnesses could not answer.

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[2] Ironically, Plaintiff complains that Mr. He was not prepared to testify about manufacturing, a topic that Defendants objected to, yet have now represented that its 30(b)(6) witness will not be prepared to testify about certain topics (relying upon its objections). (Ex. F).

B. Conferences Were Necessitated By Language And Cultural Differences.

Defendants do not contend that they should be entitled to hold conferences with their witnesses to discuss substantive testimony. However, the foreign witnesses that are the subject of Plaintiff's Motion have little or no experience with the deposition process, and have little or no understanding of English. During the conferences, counsel for Defendants assured the witnesses that it was necessary and appropriate to respond to Plaintiff's questions, and responded to questions the witnesses raised regarding colloquy between counsel about objections.

Plaintiff's only citations in support of its position that the conferences included substantive discussions actually illustrate Defendants' concerns about witness confusion.

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II. CONCLUSION.

For the foregoing reasons, Defendants respectfully request that the Court deny the Motion. Defendants will provide supplemental testimony on those topics addressed in the Motion on which the witnesses could not respond.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 5, 2006, I electronically filed the foregoing document with the Clerk of Court using CM/ECF which will send notification of such filing, and hand delivered to the following:

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I hereby certify that on June 5, 2006, I sent the foregoing document by Electronic Mail, to the following non-registered participants:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 12, 2006, I electronically filed the foregoing document with the Clerk of Court using CM/ECF which will send notification of such filing, and hand delivered to the following:

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